

**qrulepubliccomments**

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**From:** ScalaM@gtlaw.com  
**Sent:** Monday, January 30, 2006 1:53 PM  
**To:** qrulepubliccomments  
**Subject:** #73479 v2 - NPRM comments  
**Attachments:** 27Z702\_.DOC

<<27Z702\_.DOC>>

Please accept for filing these comments on behalf of British Airways. Hard copy to follow.

Thank you.

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1/31/2006

## qrulepubliccomments

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**From:** ScolnickJ@gtlaw.com  
**Sent:** Monday, January 30, 2006 4:53 PM  
**To:** qrulepubliccomments  
**Subject:** Comments of British Airways Plc

**Attachments:** Digital\_.pdf



Digital\_.pdf (406 KB)

Dear Sir or Madam,

Please accept for filing the comments of British Airways Plc in the Proposed Rulemaking concerning the Matter of Communicable Diseases. 42 CFR Part 70//71.

If you have any questions regarding this transmission please call me at (973) 360-2364.

Thank you.

Judy Scolnick  
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**BEFORE THE  
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
CENTERS FOR DISEASE CONTROL AND PREVENTION  
WASHINGTON, D.C.**

**In the matter of:**

**Control of Communicable Diseases**

**Docket  
42 CFR Part 70/71**

**COMMENTS OF  
BRITISH AIRWAYS PLC ON  
NOTICE OF PROPOSED RULEMAKING**

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**The NPRM's requirements for collecting and storing passenger data are excessively burdensome and duplicative, and unreasonably shift to carriers what should be a public responsibility.**

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Proposed 42 CFR 71.10(a) requires foreign air carriers to “solicit from each passenger (or head of household if traveling with a minor) and crewmember traveling on an international voyage destined for a U.S. port” the following information:

- (1) Full name (first, last, middle initial, suffix);
- (2) Emergency contact information;
- (3) E-mail address;
- (4) Current home address (street, apartment #, city, state/province, postal code);
- (5) Passport number or travel document number, including the issuing country or organization;
- (6) Name of traveling companions or group;
- (7) Flight information or ports of call;
- (8) Returning flight (date, airline and flight number) or returning ports of call; and
- (9) At least one of the following current phone numbers in order of preference: mobile, home, pager or work.

42 CFR 71.10(e) (proposed). Proposed 42 CFR 71.10(b) requires that this data be maintained by the carrier for 60 days following the end of the trip.

This is a wholly unreasonable demand. British Airways stores passenger information in two live data-base systems: Amadeus Reservations, and Departure Control (“DCS”). Neither system maintains data in the live system for 60 days. Data is removed from the live Amadeus system once the final booked flight has been flown and DCS data is deleted approximately 24 hours after flight completion. Updating these systems to allow 60-day data storage and the

generation of messages is not feasible. Accordingly, to comply with the NPRM's data storage requirement would require British Airways to build a completely new data-base.<sup>1</sup>

**The NPRM's requirements of data collection, storage and dissemination to the CDC overlaps with similar obligations already borne by foreign carriers to report to other governmental agencies and will cause operational delays .**

Other U.S. government agencies already have access to much of the data the NPRM would require carriers to collect and store. It should be a responsibility of Government to avoid duplication between agencies of burdensome demands on businesses, especially foreign entities. For example, passport information for both passengers and crew is already collected by carriers and sent to U.S. Customs and Border Protection ("CBP") under the Advance Passenger Information System ("APIS") program. CBP also has access to a substantial amount of information from the moment of booking held in the Passenger Name Records ("PNRs") within the live Amadeus Reservations system. APIS data, which includes the passenger's passport number and country of residence, as well as the destination addresses in the U.S. of visitors, will be available to CBP later this year.

Since 9/11 foreign air carriers have been required to implement ever-increasing amounts of security and immigration processes and procedures at the behest of the US government. While the health, safety and security of passengers and crew is, and has always been, British Airways' highest priority, these new processes and procedures represent a huge economic burden. Compliance with the APIS system alone puts enormous pressure on British Airways' resources due to the complexity of the data collection procedures and computer processes required. Public health, like security and immigration, is a public responsibility that is properly

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<sup>1</sup> Such data is also to be collected from crewmembers, which would add still more cost and yet another layer of complexity to British Airways' crew operations and systems inasmuch as some of the required data is not stored.

borne by Governments, not air carriers. The NPRM would require yet another extensive cost outlay from foreign carriers such as British Airways with little original (i.e., non-duplicative) data being generated.<sup>2</sup>

In addition proposed 42 CFR 71.10(d) requires that the carrier provide the required data within 12 hours of a request by the Director. This suggests that the data, which would have to be retained for 60 days, will only be required occasionally. It is excessive and a considerable burden to require carriers to solicit and store data for all passengers on all flights destined to the U.S. (for British Airways, this would be about three and a half million passengers annually) when such data would only be required sporadically if at all and much of it is already available from other Governmental sources.

The NPRM's data collection requirements would also cause disruption at departure airports. British Airways already performs the difficult task of collecting additional APIS data for CBP (e.g., country of residence and U.S. address for certain passengers). The CDC requirements, as set forth in the NPRM, would complicate this further with a greater chance of flight delays and cancellations during peak periods. Proposed 42 CFR 71.4 would permit the CDC Director to require the airline to obtain a "bill of health" for any U.S.-bound aircraft whenever he "deem[s] necessary." The bill of health would have to set forth the "sanitary history and condition of a carrier or the port from which the carrier departs", in whatever format prescribed by the Director. This could be an operationally difficult requirement and British Airways would require sufficient advance notice from the Director that a bill of health will be required for a particular aircraft in order to avoid delaying the flight.

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<sup>2</sup> We would also note that, in several instances, the NPRM specifically provides that the carrier must bear all of the expense of complying with the NPRM's requirements. *See, e.g.*, proposed 42 CFR 71.13 (requiring carrier to bear responsibility for application of such measures); proposed 42 CFR 71.14 (requiring carrier owner to bear expenses relating to detention of carrier).

British Airways tries to minimize the congestion and delays associated with data solicitation at airports by collecting as much APIS data as possible from passengers at the point of sale or reservation. However, the nature of the data required by the NPRM makes this alternative of little use. Travel agents will be reluctant to collect and store in carriers' reservation systems their clients' addresses and phone numbers fearing the carriers might contact their clients directly. Passengers who make their flight arrangements directly through carriers are likely to become frustrated with the numerous questions they will be asked and may terminate their reservation transaction before completing it. Passengers entering the U.S. will correctly view the NPRM's information requirements as yet another addition to the long and growing list of bureaucratic demands made of them by the U.S. government.<sup>3</sup> More compelling justification, especially given the availability of less onerous alternative sources of Governmental information should be required before such a burden on international commerce is imposed.

**Clarification is needed concerning the requirement that death or illness during flights be reported.**

Proposed 42 CFR 71.6(a) would require a foreign carrier destined for the U.S. to report to the Director "any deaths or ill persons" "as soon as such occurrences are made known to the aircraft commander and, where possible, at least one hour before arrival." It is established procedure for British Airways cabin crews to report any on-board death to the aircraft commander. However, only serious illnesses, i.e., conditions that may require the aircraft to be diverted, may be reported to the commander. The NPRM is unclear as to what kinds of illnesses are included. For example, passengers often suffer from headaches, sniffles, temperatures of

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<sup>3</sup> The U.S. already demands that passengers traveling under the visa waiver scheme be in possession of machine-readable passports or new passports with digital photographs (which, after October 2006, must store a biometric).



100.4 or above, and upset stomachs. Any of these could be a symptom of an infectious disease but are more likely to reflect just temporary conditions (and, indeed, may be flight-related). If such conditions are to be reported reports would likely be filed in connection with many if not all U.S.-bound flights. Clarification on this point is, therefore, essential. Proposed 42 CFR 71.6 should also be clarified to apply only when there is a serious global event such as a SARs outbreak or a flu pandemic.<sup>4</sup>

We would also note that proposed 42 CFR 71.10(f) provides that the Director may require the transmittal of “additional information in the airline’s . . . possession.” This is fatally vague and should be clarified to include the minimum necessary to achieve the reasonable goals of the rule.

**The Proposed CDC obligations on foreign air carriers do not give the proper deference to issues of international law and comity.**

Proposed 42 CFR 71.6(b) would permit the Director to order foreign air carriers to disseminate public health notices and other information that the Director deems necessary “at the time and in a manner specified [by the] Director”. During the SARs outbreak British Airways received similar demands from a variety of governments and public health authorities, some of which were impractical and/or presented compliance problems. Just as happened then, this provision raises the risk that the Director will demand that British Airways issue information that may contradict what is being stated or demanded by other governments. Any information

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<sup>4</sup> A related NPRM provision, proposed 42 CFR 71.7(b), requires airlines to prepare written plans for reporting on-board deaths and illnesses and specifies that such plan shall include the name and contact details of an airline agent to serve as contact between the Director and the airline. While this requirement can be met for normal administrative business and during normal business hours, paragraph (c) would require the airline agent to be available on a 24-hour, seven-day-a-week basis. Instead the contact should be a position (for example, a duty officer) rather than a named individual, as proposed by paragraph (b). The same comment is applicable to proposed 42 CFR 71.11, which would require a plan to name a specific individual as contact between the Director and the airline concerning requests for and transmission of passenger and crew manifest data.

disseminated to passengers and crew must conform to a global standard, which organizations such as International Air Transport Association and International Civil Aviation Organization can help define.

The need for global standards is further illustrated in proposed 42 CFR 71.11(g), which would permit the Director to require airlines to transmit the data to be collected under proposed 42 CFR 71.10 in a format available to both the airline and the Director. The UN EDIFACT format is the global standard for transmitting passenger information to border control authorities; however, no global message standard exists for many of the data fields specified in the NPRM.

Moreover, providing personal electronic data to the Director of the CDC in the US may run afoul of the UK Data Protection Act of 1998 as amended and other European data protection laws, to which foreign air carriers, including British Airways, are subject. Thus, before any work on a new database could begin, agreement and clearance from the UK Information Commissioner's office and from the European Commission would be required.

Apart from potential inconsistencies with international law, the CDC should be cognizant of the tension that exists between its mission to prevent the spread of communicable diseases and the U.S. Department of Transportation's desire to ensure the free access of air travel for persons with disabilities, "communicable diseases or other medical conditions" Proposed 14 CFR Section 382.21. The expense and inconvenience to the air carrier required to report any "ill passenger" under the proposed CDC rules could tend to discourage air carriers from boarding individuals who appear to be in poor health. The proposed DOT rules, on the other hand, expose domestic and foreign air carriers to substantial penalties if they deny travel to passengers who do have communicable diseases but do not "pose a direct threat", meaning "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or

procedures, or by the provision of auxiliary aids or services.<sup>5</sup> These requirements must be resolved between US Government agencies as well as between Governments to assist foreign carriers being caught in conflicting and overlapping regulatory requirements.

### **Conclusion and Recommendation.**

In view of the difficulties described above, British Airways proposes an alternative data collection procedure to be used only on specific flights entering the U.S. where a true need exists for the information. The CDC should provide foreign air carriers with passenger locator cards that could be distributed by the carrier before or during the flight and, when completed, could be deposited with U.S. authorities upon arrival. Inasmuch as other countries may require carriers to implement similar procedures, the cards should be standardized according to an international criterion so as to avoid the need to provide different cards depending on flight destination.

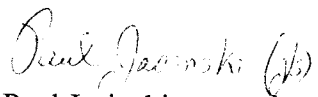
The CDC should consider the approach currently being developed by the International Air Transport Association and the World Health Organization, enabling contact tracing after disembarkation when judged necessary due to the nature of the illness at issue. Communicable disease pandemics are a global issue for which a global solution must be found. International organizations and not single a US government agency should be given the lead in developing a procedure that would avoid placing foreign air carriers in the untenable position of having to answer to different, inconsistent regulatory regimes. Such an outcome would set back, not advance the cause of accurate and timely notification of information useful in dealing with

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<sup>5</sup> Proposed 14 CFR Section 382.21 provides in pertinent part as follows: "May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition? (a) You [air carrier] must not do any of the following things on the basis that a passenger has a communicable disease or infection, unless you [air carrier] determine that the passenger's condition poses a direct threat: (1) Refuse to provide transportation to the passenger; (2) Delay the passenger's transportation (e.g., require the passenger to take a later flight)' (3) Impose on the passenger any condition, restriction or requirement not imposed on other passengers; or (4) Require the passenger to provide a medical certificate."

serious outbreaks of infectious diseases or pandemics. British Airways believes that piecemeal approaches, such as is contemplated in the NPRM, while well-intentioned will prove ineffective and merely wasteful.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Paul Jasinski".

Paul Jasinski  
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